

**FOR IMMEDIATE RELEASE**  
**NEWS RELEASE (Prehearing)**

**MOSCOW, TUESDAY, APRIL 15, 2008, AT 9:00 A.M.**

**IN THE COURT OF APPEALS OF THE STATE OF IDAHO**

**Docket No. 32387**

<b>STATE OF IDAHO,</b>	)
	)
<b>Plaintiff-Respondent,</b>	)
	)
<b>v.</b>	)
	)
<b>JESUS RAMIREZ,</b>	)
	)
<b>Defendant-Appellant.</b>	)
_____	)

Appeal from the District Court of the First Judicial District, State of Idaho, Boundary County. Hon. Steven C. Verby, District Judge.

Fred R. Palmer, Sandpoint, for appellant.

Hon. Lawrence G. Wasden, Attorney General; Rebekah A. Cudé, Deputy Attorney General, Boise, for respondent.

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Jesus H. Ramirez was stopped by Idaho State Police Trooper Kevin Bennett for speeding. He explained that he was traveling from Libby, Montana, to Kennewick, Washington, to deliver the van to a friend in the Tri-Cities area. Trooper Bennett asked Ramirez how much marijuana he was transporting. Ramirez looked away from Trooper Bennett, crossed his arms, and answered “none” in a low, raspy voice. Trooper Bennett then returned to his patrol car to verify the status of Ramirez’s driver’s license and to make sure that the van had not been reported stolen in Montana. He also requested that an officer from Bonners Ferry City Police respond to the location along with his partner, a drug detection dog. A Bonners Ferry Police officer arrived on the scene with his drug dog. Trooper Bennett issued the citations and returned Ramirez’s license and sales paperwork. Ramirez was informed that he would be free to leave after Trooper Bennett explained how to pay the tickets. Trooper Bennett then asked Ramirez if he could search the van. Ramirez initially denied consent, because the van did not belong to him. When asked a second time, Ramirez acquiesced. The officer opened the back sliding door of the van, at which time the dog alerted to the presence of narcotics. Trooper Bennett arrested Ramirez after locating a bundle of marijuana hidden inside a box with an air conditioner.

Ramirez filed a motion to suppress the evidence obtained as a result of the traffic stop, contending that Trooper Bennett illegally extended the duration of the stop. The district court denied the motion and Ramirez entered a conditional guilty plea to Possession of Marijuana, More than Three Ounces, a felony, I.C. § 37-2732(e), reserving the right to appeal the denial of his motion to suppress.

**MOSCOW, TUESDAY, APRIL 15, 2008, AT 10:30 A.M.**

**IN THE COURT OF APPEALS OF THE STATE OF IDAHO**

**Docket No. 33550**

<b>DAVID E. CURLESS,</b>	)
	)
<b>Plaintiff-Appellant,</b>	)
	)
<b>v.</b>	)
	)
<b>STATE OF IDAHO,</b>	)
	)
<b>Respondent.</b>	)
_____	)

Appeal from the District Court of the First Judicial District, State of Idaho, Kootenai County. Hon. John T. Mitchell, District Judge.

John J. Rose Jr. Kellog, for appellant.

Hon. Lawrence G. Wasden, Attorney General; Lori A. Fleming, Deputy Attorney General, Boise, for respondent.

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In the underlying criminal action, two brothers alleged that David E. Curless molested them. Curless was charged with two counts of lewd conduct with a minor under sixteen, Idaho Code § 18-1508, and a jury found him guilty of both counts. He lost a direct appeal before this Court, *State v. Curless*, 137 Idaho 138, 44 P.3d 1193 (Ct. App. 2002), and filed a petition for post-conviction relief.

Among the claims alleged in his post-conviction petition were assertions that his counsel had been deficient for failing to timely move for admission of evidence of the victims' sexual conduct under Idaho Rule of Evidence 412 and failing to present medical evidence that Curless was impotent, contradicting the victims' claims that Curless was physically aroused during the molestation. The district court ultimately entered orders of dismissal and Curless appealed the dismissal of his petition for post-conviction relief. *Curless v. State*, Docket No. 31221 (Dec. 9, 2005) (unpublished).

On appeal, this Court vacated the district court's order and remanded back to the district court for a determination of whether deficiencies in counsel's performance collectively resulted in prejudice. On remand, the district court held an evidentiary hearing and denied relief, having determined that Curless failed to carry his burden establishing that prejudice occurred. Curless now appeals.

**MOSCOW, TUESDAY, APRIL 15, 2008, AT 1:30 P.M.**

**IN THE COURT OF APPEALS OF THE STATE OF IDAHO**

**Docket No. 33434**

<b>STATE OF IDAHO,</b>	)
	)
<b>Plaintiff-Respondent,</b>	)
	)
<b>v.</b>	)
	)
<b>DANIEL M. DEISZ,</b>	)
	)
<b>Defendant-Appellant.</b>	)
_____	)

Appeal from the District Court of the First Judicial District, State of Idaho, Kootenai County. Hon. John P. Luster, District Judge.

Douglas D. Phelps, Spokane, Washington, for appellant.

Hon. Lawrence G. Wasden, Attorney General; Courtney E. Beebe, Deputy Attorney General, Boise, for respondent.

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On July 8, 2005, a magistrate issued a protection order against Daniel M. Deisz. The order instructed the police to supervise removal of Deisz's wife's belongings from the couple's residence. On July 19, 2005, police officers went to Deisz's residence with his wife, in order to retrieve her belongings. After failing in their attempts to contact Deisz and secure his cooperation, the officers used a key that Deisz's wife provided in order to gain access to the residence. When the police opened a door in the garage of Deisz's residence, Deisz stepped around the corner of the entranceway holding a handgun and fired one shot. The bullet passed through an officer's shirt and a calculator in his shirt pocket and grazed the holster for his firearm. The officer was wearing a bulletproof vest and was not injured. The police exited the garage and obtained a warrant to search Deisz's residence. The police arrested Deisz and searched his residence.

The state charged Deisz with one count of attempted first degree murder and one count of aggravated assault. The state also alleged that Deisz unlawfully exhibited a deadly weapon when he committed both offenses. Deisz filed a motion to suppress. The district court denied Deisz's motion to suppress. Deisz pled guilty to an amended count of aggravated battery for shooting the officer and aggravated assault for aiming his gun at another officer.

At the sentencing hearing, Deisz objected to the victim impact statement in the presentence investigation report on the grounds that it impermissibly recommended a specific sentence in violation of Deisz's rights under the Eighth Amendment to the United States Constitution. The district court ruled that the statement could be considered as victim input. The

district court sentenced Deisz to a fifteen-year term, with a minimum period of confinement of ten years, for the aggravated battery and a concurrent five-year term, with a minimum period of confinement of two years, for the aggravated assault. Deisz appeals.

**MOSCOW, TUESDAY, APRIL 16, 2008, AT 9:00 A.M.**

**IN THE COURT OF APPEALS OF THE STATE OF IDAHO**

**Docket No. 33602**

<b>STATE OF IDAHO,</b>	)
	)
<b>Plaintiff-Respondent,</b>	)
	)
<b>v.</b>	)
	)
<b>ALEXANDER BARCLAY, III,</b>	)
	)
<b>Defendant-Appellant.</b>	)
_____	)

Appeal from the District Court of the First Judicial District, State of Idaho, Kootenai County. Hon. John T. Mitchell, District Judge.

Amendola, Andersen & Doty, Coeur d' Alene, for appellant.

Hon. Lawrence G. Wasden, Attorney General; Jessica M. Lorello, Deputy Attorney General, Boise, for respondent.

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Alexander Barclay, III, was arrested when officers responded to his home for a domestic dispute. Barclay was charged with domestic battery; possession of marijuana; possession of drug paraphernalia; destruction of evidence; and possession of a controlled substance, methamphetamine. Barclay entered a guilty plea to possession of a controlled substance and the remaining charges were dismissed.

The district court sentenced Barclay to a unified term of four years, with a two-year period of minimum confinement, but withheld judgment and placed Barclay on probation. Less than two months later, Barclay was found to have violated the terms of his probation, including failed drug tests for both marijuana and methamphetamine. The district court revoked Barclay's withheld judgment and probation, ordered execution of the original sentence, but retained jurisdiction.

After Barclay's first period of retained jurisdiction, the district court ordered a second period of retained jurisdiction. After the second period of retained jurisdiction, the district court relinquished jurisdiction. Barclay appeals the order relinquishing jurisdiction. He also argues his sentence is excessive and that the district court erred by placing an additional term in the order relinquishing jurisdiction that was not stated on the record at Barclay's second jurisdictional review hearing. The state counters by arguing that Barclay's appeal is untimely because the district court had no authority to order a second period of retained jurisdiction without first placing Barclay on an intervening period of probation between the two periods of retained jurisdiction.

**MOSCOW, WEDNESDAY, APRIL 16, 2008, AT 10:30 A.M.**

**IN THE COURT OF APPEALS OF THE STATE OF IDAHO**

**Docket No. 33815**

<b>BIGHORN BUILDERS, INC., an Idaho</b>	)
<b>corporation,</b>	)
	)
<b>Plaintiff-Appellant,</b>	)
	)
<b>v.</b>	)
	)
<b>LIENDATA U.S.A., INCORPORATED, a</b>	)
<b>Washington corporation,</b>	)
	)
<b>Defendant-Respondent.</b>	)
	)

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Appeal from the District Court of the First Judicial District, State of Idaho,  
Kootenai County. Hon. John T. Mitchell, District Judge.

Rude, Jackson & Daugharty, Coeur d'Alene, for appellant.

Paine Hamblen LLP, Coeur d'Alene, for respondent.

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Bighorn Builders, Inc. ("Bighorn") engaged the services of LienData U.S.A., Inc. ("LienData") to prepare and record a materialman's lien in its behalf. Bighorn subsequently filed an action against LienData, alleging that the lien was defective because the verification did not contain a statement "to the effect that the affiant believes the [claims of the lien] to be just," as required by Idaho Code § 45-507(4). The verification did, however, state the affiant's belief that the claims were "true and correct," and that the lien was "not frivolous," "made with reasonable cause," and "not clearly excessive."

The district court held that, although the verification did not strictly comply with the language of I.C. § 45-507(4), it was sufficient because it substantially complied with the requirements of that statute. Bighorn challenges the district court's decision that strict compliance was not required or, in the alternative, the district court's finding that that language of the verification sufficiently complied with the statute.

**MOSCOW, WEDNESDAY, APRIL 16, 2008, AT 1:30 P.M.**

**IN THE COURT OF APPEALS OF THE STATE OF IDAHO**

**Docket No. 34115**

<b>STATE OF IDAHO,</b>	)
	)
<b>Plaintiff-Respondent,</b>	)
	)
<b>v.</b>	)
	)
<b>ROBERT T. CARD,</b>	)
	)
<b>Defendant-Appellant.</b>	)
_____	)

Appeal from the District Court of the First Judicial District, State of Idaho, Kootenai County. Hon. Charles W. Hosack, District Judge; Hon. Scott Wayman, Magistrate.

Palmer, George & Madsen, PLLC, Coeur d'Alene, for appellant.

Hon. Lawrence G. Wasden, Attorney General; Jessica M. Lorello, Deputy Attorney General, Boise, for respondent.

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Robert T. Card appeals from the magistrate's order of restitution to a victim, entered attendant to his conviction for driving under the influence. Card contends that the magistrate erred by denying Card's motion for a continuance where he was served with the restitution documentation four hours before the hearing, and that the magistrate erred by ordering restitution for the victim's massage therapy, foot baths and colon cleansings.

**MOSCOW, THURSDAY, APRIL 17, 2008, AT 9:00 A.M.**

**IN THE COURT OF APPEALS OF THE STATE OF IDAHO**

**Docket No. 33706**

<b>STATE OF IDAHO,</b>	)
	)
<b>Plaintiff-Appellant,</b>	)
	)
<b>v.</b>	)
	)
<b>SHAWN PATRICK DEWITT,</b>	)
	)
<b>Defendant-Respondent.</b>	)
_____	)

Appeal from the District Court of the Second Judicial District, State of Idaho, Latah County. Hon. John R. Stegner, District Judge; Hon. William C. Hamlett, Magistrate.

Hon. Lawrence G. Wasden, Attorney General; John C. McKinney, Deputy Attorney General, Boise, for appellant.

John F. Porter, Troy, for respondent.

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The state appeals from the decision of the district court affirming a magistrate order suppressing evidence of blood testing done on Shawn Patrick DeWitt. DeWitt was seriously injured in a single car accident in which he was the driver. Because there was evidence that he had been driving under the influence, a police officer was dispatched to the hospital to check on his condition. Although DeWitt was unconscious, Deputy Carpenter read out loud a form outlining the consequences of refusing evidentiary testing contained in Idaho Code § 18-8002(3), and then instructed a healthcare professional on the hospital staff to draw blood from DeWitt for evidentiary testing. This testing revealed a blood alcohol concentration of 0.20, and DeWitt was charged with misdemeanor second-time DUI. I.C. §§ 18-8004, -8005(4). DeWitt filed a motion to suppress the evidence of the blood test, arguing that because it was done while he was unconscious, the blood draw violated his Fourth Amendment rights. The magistrate granted the motion to suppress, a decision that the district court affirmed on intermediate appeal. The state appeals.

**MOSCOW, THURSDAY, APRIL 17, 2008, AT 10:00 A.M.**

**IN THE COURT OF APPEALS OF THE STATE OF IDAHO**

**Docket No. 33986**

<b>IN THE MATTER OF JOHN DOE, A</b>	)
<b>MINOR UNDER EIGHTEEN YEARS OF</b>	)
<b>AGE.</b>	)
<hr/> <b>STATE OF IDAHO,</b>	)
	)
<b>Plaintiff-Appellant,</b>	)
	)
<b>v.</b>	)
	)
<b>JOHN DOE,</b>	)
	)
<b>Defendant-Respondent.</b>	)
<hr/>	)

Appeal from the District Court of the Second Judicial District, State of Idaho, Latah County. Hon. John R. Stegner, District Judge. Hon. Stephen L. Calhoun, Magistrate.

Hon. Lawrence G. Wasden, Attorney General; Courtney E. Beebe, Deputy Attorney General, Boise, for appellant.

Charles E. Kovis, Moscow, for respondent.

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In April 2006, a church employee contacted the police regarding two individuals dressed in black who were looking in a church window and appeared to possibly be attempting to gain access to the church. Around 9:45 p.m., four police officers arrived at the church. Two officers, each in separate patrol cars, cornered two young individuals and ordered the two individuals to lie down on their stomachs and the individuals complied. One of those individuals was seventeen-year-old John Doe and the other was his sixteen-year-old friend.

One officer placed Doe in handcuffs while he was lying on the ground, and the other officer handcuffed Doe's friend. The officer who handcuffed Doe performed a pat-down frisk for weapons. The officer felt a square box in Doe's front pocket that he immediately recognized as a cigarette package. The officer asked Doe how old he was, and Doe responded that he was seventeen years old. The officer reached into Doe's pocket and removed the cigarettes. When asked whether he had anything else illegal on his person, Doe responded that he had marijuana in another pocket of his pants. The officer retrieved the marijuana from Doe's pocket and Doe admitted that the marijuana was his.

The state filed a petition alleging that Doe was a juvenile, had possessed marijuana, and was therefore within the purview of the Juvenile Corrections Act (JCA). Doe filed a motion to

suppress the marijuana and his admission regarding his ownership. An evidentiary hearing was held before the magistrate, and it denied the motion to suppress and found Doe to be within the purview of the JCA for possession of marijuana. Doe appealed, and the district court reversed the magistrate, suppressed the marijuana and Doe's statement, and vacated the magistrate's decree that Doe fell within the purview of the JCA. The state appeals.